

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



756051

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IN THE  
UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

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DOCKET NO. 75 - 6051

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REV. DONALD L. JACKSON

Plaintiff - Appellant,

vs.

UNITED STATES OF AMERICA & STATE OF NEW YORK

Defendants - Appellees,

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A P P E N D I X

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REV. DONALD L. JACKSON  
P. O. BOX 494  
BUFFALO, N. Y. 14205  
Phone 716- 849-0217

PAGINATION AS IN ORIGINAL COPY

TO:

Mr. Theodore J. Burns  
Assistant U. S. Attorney  
U. S. Courthouse  
Court & Franklin Street  
Buffalo, New York 14202

Mr. Michael F. Colligan  
Assistant Attorney General  
State of New York  
The Capitol  
Albany, New York 12224

## APPENDIX

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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REV. DONALD L. JACKSON

Plaintiff

vs.

UNITED STATES OF AMERICA AND STATE OF NEW YORK.

Defendants

CIV. No. 74-439

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The defendant, State of New York, having moved for an enlargement of time in which to answer or move against the plaintiff's complaint, it is hereby

ORDERED, that the time for the defendant, State of New York, to answer or move against the complaint be enlarged to May 15, 1974.

Dated May 1, 1974

/s/ AUBRY E. ROBINSON JR.  
U. S. J.

NOTE: DEFENDANT STATE OF NEW YORK, DID NOT FILE A TIMELY ANSWER OR TO MOVE AGAINST THE COMPLAINT AS IN THE TIME AUTHORIZED BY THE COURT.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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REV. DONALD L. JACKSON

Plaintiff

vs.

Civil Action No. 74-439

UNITED STATES OF AMERICA, et al.,

Defendants

---

O R D E R

Upon consideration of the motion of defendant United States of America to change venue and for enlargement of time, and it appearing to the Court that transfer to the Western District of New York would be for the convenience of the parties and witnesses, and serve the interest of justice, it is by the Court this 23rd day of May, 1974

ORDERED that this action be and the same hereby is transferred to the United States District Court for the Western District of New York, pursuant to 28 U.S.C. 1401 (a); and is further

ORDERED that the time within which defendant United States of America must answer, move or otherwise plead be and it hereby is extended to an including sixty days from the date of this order.

/s/ AUBRY E. ROBINSON JR.  
UNITED STATES DISTRICT JUDGE

NOTE. U.S.A. HAS NOT FILED AN ANSWER AND IS IN DEFAULT.

(N 16 \_" ("&\$)

74-2094

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UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

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At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court-of House, in the City of New York, on the Twenty-second day of November, one thousand nine hundred seventy-four.

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Rev. Donald L. Jackson

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA, and STATE OF NEW YORK,

Defendants-Appellees.

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It is hereby ordered that the motion made herein by counsel for the appellee State of New York by notice of motion dated October 23, 1974 to dismiss the appeal from the United States District Court for the Western District of New York for lack of jurisdiction with costs be and it hereby is granted except as to costs.

/s/ JOSEPH SMITH, U.S.C.J.

/s/ PAUL R. HAYS, U.S.C.J.

/s/ WALTER R. MANSFIELD, Circuit  
Judge

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

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PRO SE  
2/10/75  
75-3006

At a Stated Term of the United States Court of Appeals,  
in and for the Second Circuit held at the United States  
Court House, in the City of New York, on the 20th day of  
February, one-hundred thousand nine hundred seventy-five

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REV. DONALD L. JACKSON,

Appellant,

v.

Hon. John T. Curtin,

Appellee,

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Motion having been made herein by Appellant pro se  
for a writ of mandamus and/or writ of prohibition

Upon consideration thereof, it is

Ordered that said motion be and it hereby is denied  
without prejudice to renewal after 60 days from the date  
of this order.

/s/ PAUL R. HAYS , U.S.C.J.

/s/ WILFRED FEINBERG, Circuit Judge

/s/ JAMES S. HOLDEN, District Judge

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

REV. DONALD L. JACKSON

Plaintiff

v.

VIV. 74-293

UNITED STATES OF AMERICA  
AND STATE OF NEW YORK,

Defendants

---

APPEARANCES: Plaintiff pro se.

RICHARD J. ARCARA, ESQ., United States  
Attorney (Theodore J. Burns, ESQ., of  
Counsel). Buffalo, New York, for the  
defendant United States of America.

Louis J. LEFKOWITZ, ESQ, Attorney  
General, State of New York (Rugh  
t

Kessler Toch, Solicitor General and  
Michael F. Colligan, Assistant Attorney  
General, of counsel, Albany, New York  
for defendant State of New York.

In this action the plaintiff has moved for an  
order of the court providing, among other things, the  
following relief, He seeks an injunction against the  
operation and enforcement of Article 6, Section 20 of  
the New York State Constitution on the grounds that it

violates plaintiff's rights under the Voting Rights Act of 1964 and the ninth, fourteenth, fifteenth and twenty-fourth amendments to the United States Constitution (para. 4 of complaint). He also seeks an injunction

prohibiting the election of New York State judges on the grounds that "Article 6. Section 138" (apparently Section 137 of the New York Election Law) violates plaintiff's constitutional rights.

Argument was heard on plaintiff's motion for injunctive relief and for a three-judge court on March 3, 1975.

The first challenged section, Art. 6 # 20.a reads in relevant part as follows:

...No person, other than one who holds such office at the effective date of this article may assume the office of judge of... City court outside of the city of New York unless he has been admitted to practice law in this state at least five years or such greater number of years as the legislature may determine.

A litigant is not entitled to a three-judge court where his constitutional claim is insubstantial.

Swift & Co. v. Wickham, New York, 382 U.S. 111 )(1965);  
Rosenthal v. Bd. of Educ, 497 F. 2d 726 (2d Cir. 1974).  
The constitutional challenge to Art. 6 # 20 is insub-  
stantial. "THERE IS NO FEDERAL RIGHT TO RUN FOR OR HOLD  
STATE ELECTIVE OFFICE." Petersen v. Knutson, 367 F. Supp.  
515, 517 (D. Minn. 1973) citing Snowden v. Hughes.  
321 U. S. 1 (1944). In the Petersen case it was held that  
a disbarred attorney had no right to run for justice of  
the Minnesota Supreme Court because he did not meet the  
requirements of the Minnesota constitution. The New  
York courts have upheld the application of Art. 6 # 20  
as an attribute of the unified court system. See, e.g.,  
In Re Storace, 30 App. Div, 2d 220, 291, N.Y.S. 2d 416  
(4th Dept. 1968) ; Application of O'Connor, 180 Misc. 630,  
43 N.Y.S. 2d 412 (Sup. Ct., Onondaga Cty., 1943).  
Further, the section is not constitutionally offensive  
because it does not involve a restriction upon access  
to the ballot. There is no support for the argument  
that there is a constitutional right to vote for a

person not admitted to the bar as a judicial candidate. Cf. Rubino et al. v. Ghezzi 74-2374, 74-2435 (2d Cir.. March 3, 1975). Professional qualifications for a judicial position are not an ~~indiv~~ individual requirement. Plaintiff's request for a three-judge court and for an order enjoining the election of New York State judges is denied.

The other New York statute challenged by plaintiff appears to be Section 137 of the New York Election Law (See plaintiff's Affidavit in Support of Three-Judge Court, etc., para. 1, which refers to "Article 6 Section 138 of the New York Election Law"). Plaintiff's requests for the convening of a three-judge court and for injunctive relief with regard to Section 137 are denied. The constitutional claim is insubstantial. Section 137 prohibits designating petitions for primary elections, nominations of nonmembers of political parties, and petitions designating for a primary election a person not enrolled as a member of the party referred to in the designating petition.

Exceptions to these prohibitions are contained in # 137.5 which provides:

This section shall not be construed to apply to a political party designating or nominating candidates for the first time, nor to candidates for judicial office.

The plaintiff claims that the section is unconstitutional because it "allows judges to file their nominating petitions in all recognized political parties, while non-lawyers are limited only to one party." "(N) ot every limitation or indicidn ental burden on the exercise of voting rights is subject to a strigent standard of review." Bullock v. Carter, 405 U.S. 134,143 (1972), citing McDonald v. Board of Election, 394 U. S. 802 (1969); The Supreme Court has recognized that a state has a legitimate intrest in regulating the number of candidates on the ballot. Jenness v. Fortson, 403 U.S. 431, 432 (1971) ; Williams v. Rhodes, 393 U.S. 23, 32 (1968). The New York statute does not absolutely bar the right to vote for a nonmember of a political party at the

primary election.

It is true that the law in question establishes a difference in the machinery and mechanics between a nomination by a political party of a person who is an enrolled member of that party and of a person who is not. It does not preclude the nomination by a political party of a person who is not a member of that party nor is the majority of the enrolled voters of a political party foreclosed from nominating for office a person who is not a member of that party.

Ingersoll v. Curran, 188 Misc. 1003, 1007, 70 N.Y.S. 2d 435, 439 (Sup. Ct., Albany Cty., 1947), *aff'd*, 297 N.Y. 522, 74 N.E. 2d 465. See also Ingersoll v. Heffernan, 188 Misc. 1047, 70 N.Y.S. 2d 687 (Supp. Ct. N.Y. Cty., 1947; *aff'd* 297 N.Y. 524, 74 N.E. 2d 466.

Section 137 does not contain an offensive scheme discriminating against one class of persons as was the case in Bullock v. Carter, *supra*. It simply excludes judicial candidates and political parties designating or nominating candidates for the first time from the requirement of party membership for purposes

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of party nomination at a primary election. Non-party members may run in the primary if a majority of the party committee so authorizes or may wage a write - in campaign.

The New York State defendants have moved to dismiss the complaint. The court shall not consider that motion at this time.

Plaintiff's motions for the convening of a three-judge court and for preliminary injunctive relief ~~are~~ are hereby denied.

So ordered.

/s/ JOHN T. CURTIN

United States District  
Judge

Dated  
: March 28, 1975

PRO SN4/29/75  
75-3006

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals,  
in and for the Second Circuit, held at the United States  
Court House, in the City of New York, on the 5th day of May  
one thousand nine hundred and  
seventy-five

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Rev. Donald L. Jackson

Appellant,

v.

Hon. John T. Cartin,

Appellee.

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A motion having been made herein by Appellant pro se  
for renewal of petition for a writ of mandamus and/or  
prohibition

Upon consideration thereof, it is

Ordered that said motion be and it hereby is denied.  
Mandamus is not to be used as a substitute for appeal,  
E.g., *Schlagenhauf v. Holder*, 379 U.S. 104, 110 (1964);  
*Parr v. United States*, 351 U.S. 513, 520 (1956);  
*Ex Parte Fahey*, 332 U.S. 258, 259 (1947).  
The district court's order, dated March 28, 1975, is  
appealable, E.g., 28 U.S.C. 1292 (a) (1); *Mengelkoch v.*  
*Industrial Welfare Comm'n* 393 U.S. 83 (1968); 9 Moore,  
Federal Practice # 110.03 (3), at 71 (2d ed. 1946).

/s/ PAUL R. HAYS, U.S.C.J.

/s/ WILFRED FEINBERG, U.S.C.JJ.

/s/ JAMES S. HOLDEN (WF)  
District Judge

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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REV. DONALD L. JACKSON

Plaintiff Civ. 74-293

-v-

ORDER

UNITED STATES OF AMERICA  
AND STATE OF NEW YORK

Defendants

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The plaintiff having filed a motion for the convening of a three-judge court on July 30, 1974, and the Court having denied plaintiff's motion by a Decision and Order entered on March 28, 1975, and the plaintiff having filed a motion on June 2, 1975 for an enlargement of time within which to file a notice of appeal from this Court's Order of March 28, 1975, and the defendants not objecting to the relief requested by the plaintiff, after due deliberating, it is

ORDERED that plaintiff's time to file a notice of appeal from this Court's Order of March 28, 1975, denying his motion for the convening of a three-judge court, be and it hereby is extended to June 28, 1975.

DATED: Buffalo, New York, June 16, 1975.

(p)

/s/ (p) JOHN T. CURTIN  
United States District Judge